IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 83-1558

WALTER D. ZANT, WARDEN
GEORGIA DIAGNOSTIC AND
CLASSIFICATION CENTER,

Petitioner,

v.

HENRY WILLIS, III,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

(As Stated by Petitioner)

I.

Did the decision by the United States Court of Appeals for the Eleventh Circuit improperly amount to a conclusion that the Georgia statute concerning the use of peremptory challenges is unconstitutional and did the Eleventh Circuit Court of Appeals improperly conclude that the Respondent could inquire into the thought processes of the prosecutor in making such peremptory challenges?

II.

Did the decision by the Eleventh Circuit Court of Appeals allowing an evidentiary hearing as to the jury composition impermissibly establish a new category, that is, a particular age group, as an identifiable community group for purposes of jury selection?

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[As stated by Petitioner]

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II.

[As stated by Petitioner]

DID THE DECISION BY THE ELEVENTH CIRCUIT COURT OF APPEALS ALLOWING AN EVIDENTIARY HEARING AS TO THE JURY COMPOSITION IMPERMISSIBLY ESTABLISH A NEW CATEGORY, THAT IS, A PARTICULAR AGE GROUP, AS AN IDENTIFIABLE COMMUNITY GROUP FOR PURPOSES OF JURY SELECTION? 14

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Respondent		

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

STATEMENT OF THE CASE [1]

(i) Procedural History

Henry Willis was convicted of murder and sentenced to death by the Superior Court of Bleckley County in Cochran, Georgia on January 28, 1978. The Supreme Court of Georgia affirmed the conviction and sentence. Willis v. State, 243 Ga. 185, 253 S.E. 2d 70, cert. denied, 444 U.S. 885 (1979).

On January 10, 1980, Henry Willis filed a Petition for Writ of Habeas Corpus in the Superior Court of Tattnall County, Georgia. The Petition was subsequently amended. The Petition was denied on August 29, 1980 (Ex. 40). A certificate of probable cause to appeal was denied by the Supreme Court of

1. References to the Record in the District Court below will be designated "R" followed by the appropriate page number. The transcript and record of the proceedings in the state courts of Georgia are contained in the forty-four Exhibits filed by the State with its Answer-Response in the District Court. The Exhibits are listed at R-62. References to the state court proceedings will be designated "Ex." followed by the appropriate Exhibit number and page number.

Georgia on November 13, 1980. Certiorari was denied by the United States Supreme Court. Willis v. Balkcom, 451 U.S. 926, rehearing denied, 452 U.S. 932 (1981).

On July 24, 1981, Henry Willis filed a Petition for Writ of Habeas Corpus in the District Court below (R-11); this Petition was subsequently amended (R-58). The case was referred to a United States Magistrate to submit proposed findings of fact and recommendations for disposition (R-5).

On April 29, 1982, the Magistrate issued his Proposed Findings of Fact and Conclusions of Law (R-177). (State's Appendix A). After objections were made by Henry Willis to the proposed findings and conclusions of the Magistrate, the District Court, on September 21, 1982, issued a one paragraph order adopting in full the Magistrate's proposed findings and conclusions and denying habeas corpus relief (R-298). (State's Appendix B).

Henry Willis appealed the denial of habeas corpus relief to the United States Court of Appeals for the Eleventh Circuit. On November 17, 1983, that Court entered its judgment directing the district court to conduct an evidentiary hearing on two separate issues. Willis v. Zant, 720 F.2d 1212 (11th Cir. 1983). (State's Appendix C). On December 22, 1983, the Court of Appeals denied the State's suggestion for rehearing en banc. (State's Appendix D). The State has filed a Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit (No. 83-1558), and now Henry Willis files this brief in opposition.

(ii) Statement of Facts

Henry Willis, III, a young black man, was charged with the February 11, 1976 murder of a white police officer in a small south Georgia town. Henry Willis and another young man, Larry Fleming, had robbed a convenience store while Son Fleming,

the uncle of Larry Fleming and twenty-five years Henry Willis' senior, waited outside in a car he had borrowed for this purpose. In flight from the robbery, the three men were stopped by a police officer, whom they overpowered, taking his .357 Magnum. They ordered him into their car and drove him several miles, before Son Fleming, the older participant, ordered him out of the car and shot him in the head with the .357 Magnum. After this shooting, Henry Willis and Larry Fleming fired several shots of .22 caliber ratshot into the victim.

The central issue for the jury to decide was the punishment to be meted out to Henry Willis.

Venue in the case was originally in Lanier County, Georgia; however, a change of venue was ordered by the trial judge. The trial judge ordered counsel for the prosecution and counsel for the defense to each submit a list of ten (10) counties to consider for the venue change. None of the ten counties on the prosecution and defense lists coincided. All of the counties listed by the prosecution had a low percentage of black population.The trial judge ordered venue changed to Bleckley County, the first county named on the prosecution's list of ten counties. Bleckley County is a small rural south central Georgia county with a Black population of only 19%.

At trial, the prosecutor used all ten (10) of his peremptory challenges on the ten (10) black venirepersons presented as prospective jurors. The prosecutor used his one (1) alternate juror peremptory challenge to strike the one black person presented as a prospective alternate juror. The focus of the prosecution's voir dire examination of black jurors was to have them struck for cause because of their views on capital punishment. He was successful in eliminating seventeen (17) of thirty-one (31) prospective black jurors for cause based on their

attitudes toward capital punishment. With the jury thus purged of black persons, Henry Willis was convicted and sentenced to death by an all white jury with all white alternates.

The further facts necessary to this brief in opposition are incorporated into the argument of the issues.

REASONS THE PETITION FOR WRIT OF CERTIORARI SHOULD NOT BE GRANTED

I.
[As stated by Petitioner]

DID THE DECISION BY THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT IMPROPERLY AMOUNT TO A CONCLUSION THAT THE GEORGIA STATUTE CONCERNING THE USE OF PEREMPTORY CHALLENGES IS UNCONSTITUTIONAL AND DID THE ELEVENTH CIRCUIT COURT OF APPEALS IMPROPERLY CONCLUDE THAT THE RESPONDENT COULD INQUIRE INTO THE THOUGHT PROCESSES OF THE PROSECUTOR IN MAKING SUCH PEREMPTORY CHALLENGES?

Henry Willis, pre-trial, moved the trial court that the prosecutor be restricted "from using his peremptory strikes in a racially biased manner" (Ex. 1 at p. 75-76). The motion distinctly alleged that the prosecutor in this case had "over a long period of time excluded" black jurors "by a long pattern of racial discrimination in the excess [sic for exercise] of his peremptory strikes" (Ex. 1 at p. 75-76). The prosecutor "demurred" to the motion (Ex. 1 at p. 767) which operated to admit the allegations supporting the motion, for the purposes of the demurrer.

At the hearing on the motion, Henry Willis offered to present evidence on behalf of the motion (Ex. 11 at p. 2546). The trial court sustained the State's demurrer to the motion as a matter of law "even assuming the facts to be true as stated in the motion" (Ex. 11 at p. 2546; Ex. 3 at p. 800).

Henry Willis has never in any court been allowed an evidentiary hearing to prove his allegation that this prosecutor has a history and pattern of exercising his peremptory strikes to systematically eliminate black persons from trial juries.

In selecting the jury to try this case, 449 jurors were summoned, and after excusal for various reasons, there was complete voir dire of 129 jurors (98 white and 31 black). Of these 129, twenty were excused because of their attitudes against the death penalty (3 white and 17 black)[2], forty-eight were excused for prejudice, and four for other reasons, leaving fifty-six jurors the court considered competent.[3]

Under Georgia's "struck jury" system, (former) Ga. Code Ann. §§59-805 and 808, competent jurors were presented, in the order of their original summonses, to the prosecutor, who may accept or peremptorily reject them. All of the jurors were qualified before either party exercised its strikes. If a juror is accepted by the prosecutor, he is then presented to the accused, who has the option of excusing the juror. The prosecutor may exercise a maximum of ten, and the defense, twenty, such strikes. Two alternate jurors were similarly chosen, with the prosecutor allowed one, and the defendant, two, strikes for each alternate.

Following this procedure, the jury here was chosen from among the first 42 jurors determined competent by the court, pursuant to (former) Ga. Code Ann. §59-801. Of these, 32 were white, and 10 were black.

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2. The prosecution questioned black jurors differently than he did white jurors; the fact that the prosecutor did not want black people on the jury was obvious during the voir dire examination.

3. The general figures in this paragraph and in any subsequent paragraph are supported by the transcript of the voir dire portion of the trial, and by the brief of the Attorney General of Georgia in the Georgia Supreme Court. The breakdowns into blacks and whites are based on references in the voir dire transcript, voter registration records made part of the record and on written questionaires submitted by prospective jurors, and made part of the record. (Ex. 21 and Ex. 34).

As predicted by Henry Willis' pre-trial motion and defense counsel's statement to the court, the prosecutor used all ten of his peremptory strikes to eliminate black persons, thereby leaving Henry Willis only white jurors to consider. In selecting alternate jurors, the prosecutor used one peremptory strike against the only black person presented for consideration, securing the result of an all-white jury with all white alternates.[4] This state official, the prosecutor, successfully resisted in the trial court a motion that he be forbidden from exercising his peremptory challenges "in a racially biased manner." Though it should be enough that the purposive and wholly successful actions of a state official, thus judicially immunized, in this one case plainly and grossly denied Henry Willis' right to be immune from racially discriminatory administration of law, this record further shows that Henry Willis in the same motion alleged and made an offer to prove that past actions on the part of this very official had exhibited a pattern of aiming at, and procuring, all-white juries to deal out punishment to black defendants. Even the offer was refused by the trial court. (Ex. 11 at p. 2546).

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4. The race of the 10 jurors and one alternate peremptorily struck by the prosecutor is fully documented in the record:
1) Belinda Marshall is a black woman (Ex. 21 at p. 166);
2) Robert Lee Lindsey is a black man (Ex. 21 at p. 155);
3) Montine Durham is a black woman (Ex. 21 at p. 161);
4) Ulysses Donaldson is a black man (Ex. 21 at p. 161);
5) Maggie McClendon is a black woman (Ex. 21 at p. 166);
6) Linda Ates is a black woman (Ex. 21 at p. 158);
7) Rosetta Hobes is a black woman (Ex. 21 at p. 164);
8) Willie Ates is a black man (Ex. 21 at p. 158);
9) Winnie Carswell is a black woman (Ex. 21 at p. 157);
10) Martha Ridley is a black woman (Ex. 21 at p. 168);
11) R. B. Bullard is a black man (Ex. 21 at p. 159).

Furthermore, in response to Henry Willis' objection, the trial judge noted that the prosecutor had used all of his peremptory strikes on black persons and that Henry Willis had used his peremptory strikes on white persons [of course, since after the prosecutor's exercise of his strikes, only white jurors were left for Henry Willis to consider.] (Ex. 35 at pp. 3-5).

The Eleventh Circuit recognized the right to a hearing under Swain v. Alabama, 380 U.S. 202 (1965), however, Henry Willis is entitled to more. See cross-petition for writ of certiorari filed this date by Henry Willis.

The State seems to have articulated an excuse for the prosecutor striking each of the eleven black jurors deemed qualified by the court. A cursory reading of the State's petition might leave the impression that the prosecutor in this case would have done nothing unconstitutional to have obtained a death sentence against Henry Willis.

Prior to trial, after a Superior Court Judge held himself disqualified to preside, the District Attorney held a news conference on the courthouse steps to protest what he considered to be delays in the case. At this news conference, the District Attorney soaked a volume of the Georgia Code in gasoline and burned the law book. (See Ex. 8 at pp. 1446-1480; Ex. 14 at p. 71). This book burning was conducted by the District Attorney to prejudice Henry Willis' exercise of his right to fully litigate the case and to place blame on Henry Willis in the public's eye for the lawful and proper disqualification of the sitting judge and its attendant delay of the proceedings.

During pre-trial proceedings in this case, the Special Prosecutor, in the courtroom, assaulted one of Henry Willis' counsel with clenched fists. (See Ex. 8 at pp. 1558-1585).

Based on these actions and others, Henry Willis moved the trial court to disqualify both of these prosecutors from participating in the case; the motions were denied.

The prosecution's outrageous pre-trial actions were a mere warm up to the misconduct which would occur at trial in the presence of the jury.

In his opening statement to the jury, the District Attorney purported to describe the events leading up to the death of the victim, James Giddens. In this description, the District Attorney stated to the jury that the evidence would show that just prior to his death James Giddens begged Henry Willis to spare his life stating "This is my last day on the job. I have a wife and three small children at home." (Ex. 35 at p. 40).

The district attorney knew that no such evidence existed; no such evidence was ever presented at trial.

The first substantive witness called by the prosecutor was Mrs. Annice Giddens, the widow of the victim, James Giddens. In the presence of the jury, the prosecutor displayed to Mrs. Giddens the blood stained shirt worn by her husband at the time of his death (Ex. 35 at p. 84); the prosecutor then showed Mrs. Giddens a photograph of her deceased husband lying dead in a pond (Ex. 35 at p. 85). Mrs. Giddens became overcome with emotion and could not continue her testimony (Ex. 35 at p. 85).

The prosecutor could have had no other reason to call Mrs. Giddens as a witness and cause her emotional outburst except to prejudice Henry Willis. The prosecutor's purported sole reason for calling Mrs. Giddens was to identify the victim (Ex. 35 at pp. 86-87). Yet, the victim's identity was never in question and there were numerous witnesses who could have performed this technical function. In fact, the very next witness called, J. M. Sirmans, could have made the identification (Ex. 35 at p. 92).

However, the prosecutor had other acts of misconduct reserved for his examination of Mr. Sirmans. During this examination of Mr. Sirmans, the prosecutor questioned him about

the ages of James Giddens' children, who were uninvolved in the crime. (Ex. 35 at p. 91).

There is no way that the ages of Mr. Giddens' children could possibly have any relevance.

After this, the district attorney made reference in the presence of the jury to another unrelated highly publicized death penalty case in Bleckley County (Roosevelt Green) which had been moved on change of venue to Monrce County.

Walter Gaskins, the Sheriff of Lanier County, was called to testify concerning the circumstances of Henry Willis' arrest. In the course of his testimony, Sheriff Gaskins indicated that Henry Willis was fully cooperative after his arrest and had caused no problems (Ex. 36 at pp. 436-437). On cross-examination of Sheriff Gaskins, the district attorney engaged in the following utterly irrelevant and highly prejudicial examination:

CROSS EXAMINATION BY MR. NEUGENT:

Q. Sheriff, do you know when those photographs were made and who made them?

A. No, sir. I don't.

Q. Have you ever seen them before?

A. That's the first time I've seen these.

Q. Look at State's Exhibit No. 502. What is that?

A. (Examines exhibit) That a 22 caliber pistol. Q. And what is it made for?

A. Well, it's made to shoot.

Q. Shoot bullets?

A. Yes, sir.

Q. Have you ever seen Henry Willis, III, at the butt end of that smoking 22 pistol?

A. No, sir.

(Ex. 36 at p. 439).

Later, Captain Stewart McGlawn of the Georgia State Patrol was called to testify concerning the conditions at the scene of

Henry Willis' arrest. Cpt. McGlawn also testified that Henry Willis was cooperative (Ex. 37 at p. 551).

Again, on cross-examination of Cpt. McGlawn, the district attorney, for no reason other than to create prejudice, asked, "Have you ever seen Henry Willis on the butt end of that smoking pistol" (Ex. 37 at p. 553).

Henry Willis, took the stand at trial and testified on his own behalf. Although the district attorney was certainly entitled to conduct a thorough cross-examination of Henry Willis, he was not entitled to use cross-examination to stir up passion, prejudice and racism.

Consider the following excerpt from the cross examination of Henry Willis:

Q. What did Mr. Giddens tell you on the way to his death?

A. I don't remember him telling us anything.

Q. Didn't he tell you that it was his last day on the job?

A. No, sir.

Q. Didn't he tell you that he had a wife and three children at home?

A. No, sir.

Q. That if you'd let him go that he wouldn't hurt nobody and wouldn't tell nobody?

A. No, sir.

Q. That he would fix it to where - if you'd just let him go home to his family?

A, No, sir.

Q. He didn't tell you that?

A. No, sir.

Q. Did you know he was a married man?

A. No, sir.

Q. Had you ever seen these three children here before?

A. No, sir.

Q. Had you ever seen his wife before?

A. No, sir.

(Ex. 37 at pp. 628-629).

The prosecutor knew that that there was absolutely no evidence anywhere to indicate that Mr. Giddens had told Henry Willis about his family. This was injected solely for prejudice. There could be no conceivable relevant purpose for pointing out the Giddens family in the courtroom.

But, the prosecutor was only getting started with his unconscionable actions. The cross examination of Henry Willis continued as follows:

Q. Why did you get the gun out?

A. I don't know.

Q. Who was it called him a honkey?

A. I don't think nobody called him a honkey.

Q. You don't know about that?

A. No, sir.

Q. Who was it said that we -- 'Honkey, we've got something for you?'

A. I don't know nobody that said nothing like that.

MR. AXAM: Your Honor, unless he's willing to make an offer of proof, I think that his deliberately asking the question about 'honkey' when there is no basis for that question borders on something that I think is reprehensible. Unless he's willing to make an offer of proof, to inject in issue that this man or some of the other cohorts said, 'honkey' in any way, I object to it on that basis. He just can't ask any question in the world unless there's a foundation for it. If he has reason to believe, then I'd like him to make an offer of proof to you -- the Court.

(Ex. 37 at p. 631).

The district attorney knew that this line of questioning was false; there was no evidence anywhere that Henry Willis had used the term "honkey". This line of questioning was pursued

solely to raise racial fear and prejudice in the minds of the prosecutor's hand chosen all-white jury. This racist behavior would not have occurred had there been even one black person on the jury.

During the penalty phase of the trial, Henry Willis presented the testimony of Dr. Fay Goldberg, a psychologist. Dr. Goldberg testified concerning psychological tests she administered to Henry Willis and her professional evaluation.

In cross examination concerning these psychological tests, this prosecutor asked Dr. Goldberg, "Did you have occasion to test any of the victims?" (Ex. 38 at p. 978). Of course, the victim in this case was dead. Later, the following utterly irrelevant cross examination occurred:

> Q. That you conducted [the tests] on less than one-half of a day.
>
> A. It's a long time.
>
> Q. That's a long time?
>
> A. Three to four hours of testing is a long period of time.
>
> Q. Do you know how long Mr. James Giddens will be dead?
>
> A. Well, I don't think that's the point. I think most forensic assessments take fifteen minutes, and three to four hours is a long assessment period.
>
> Q. Do you know how long Mr. James Giddens will be dead?

(Ex. 38 at p. 982).

The prosecutor had no intention of seeking any probative evidence. More prejudice was his sole objective.

On the day of closing argument on penalty, James Giddens' son sat in the front row next to the jury dressed in a police

officer's uniform with a badge and Ray City Flag.[5] A motion for mistrial based on this incident was denied and the child was allowed to remain in the front row dressed in the police uniform (Ex. 38 at p. 996).

At his closing argument on penalty, the prosecutor could not confine his personal attacks to Henry Willis; his unconscionable remarks now extended to personal attacks on the expert witnesses and counsel for Mr. Willis.

The prosecutor labeled the expert witnesses and counsel for Henry Willis as outsiders who had no business in Bleckley County, Georgia. Among his xenophobic remarks were the following:

> Now, the same thing is true with reference to Glenn Pierce, Steve Hoenack, Robert Otto, Fay Goldberg [expert witnesses] and others that they brought in here to talk about empirical research. I don't know what that is. They've never been to Ray City, Georgia. Never been to Cochran, Georgia, before and won't be back. But I liken them, and -- the other night I was laying awake and I heard a freight train coming through town. And I thought to myself how much like a freight train Millard Farmer [Appellant's counsel] and his entourage is coming through Cochran. They will leave here in a few days. They will be gone. Ed Giddens will still be dead. (Ex. 38 at p. 1008).

The prosecutor accused the experts of trying to "brainwash" the jury (Ex. 38 at p. 1009).

The prosecutor argued about the expert witnesses:

> Now all these people came in here. They've testified for Millard Farmer before. They've worked for him before. They're working for free. They have a cause. They come here. I don't know why people closer than Minneapolis or Minnesota or Boston, Massachusetts, or somewhere -- I don't know why people that are closer don't know these facts. But apparently, they don't. But I respectfully submit to you that they are not authorized and should not be permitted to come to Cochran, Georgia, or to Ray City, Georgia, or to any other place and dictate to you what you are to do and how you are to run your system of justice.
>
> (Ex. 38 at p. 1010).

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5. The deceased, James Giddens was a Ray City police officer.

If this prosecutor didn't intend to discriminate against Henry Willis and black people in the jury selection process, grits ain't breakfast in Bleckley County, Georgia.

II.

[As stated by Petitioner]

> DID THE DECISION BY THE ELEVENTH CIRCUIT COURT OF APPEALS ALLOWING AN EVIDENTIARY HEARING AS TO THE JURY COMPOSITION IMPERMISSIBLY ESTABLISH A NEW CATEGORY, THAT IS, A PARTICULAR AGE GROUP, AS AN IDENTIFIABLE COMMUNITY GROUP FOR PURPOSES OF JURY SELECTION?

As noted supra, Henry Willis was tried on change of venue from Lanier County in Bleckley County, the county of first choice of the prosecutor.

Prior to trial in Bleckley County, Henry Willis timely filed a challenge to the Bleckley County Traverse Jury Pool, alleging, among other things, that young adults age 18 - 30 were unconstitutionally underrepresented in the jury pool.

At the hearing on Henry Willis' jury composition challenge, the State stipulated that while young adults age 18-30 constituted 35.1% of the jury eligible population in Bleckley County, they constituted only 10.1% -- an absolute underrepresentation of 25% -- of the traverse jury pool from which Henry Willis' trial jury was drawn. (Ex. 20 at pp. 369-370, 374; Ex. 21 at p. 172). The state trial court found these figures as fact. (Ex. 3 p. 942).

This 25% underrepresentation is within the range of disparities found significant in cases involving underrepresentation of other cognizable groups. E.g. Alexander v. Louisiana, 405 U.S. 625 (1972); Whitus v. Georgia, 389 U.S. 545 (1967); Hernandez v. Texas, 347 U.S. 475 (1954).

The state trial court, based on Georgia Supreme Court cases, held as a matter of law that young adults age 18 - 30 do not constitute a cognizable group. (Ex. 20 at p. 378). Based on

this ruling the trial court refused to hear any evidence whatscever to show that young adults age 18 -30 constitute a "cognizable" group and that there was a history on past jury lists in Bleckley County of systematic underrepresentation of young adults age 18 - 30; Henry Willis offered to present such evidence and attempted to present such evidence. (Ex. 20 at pp. 374-380).

The paramount purpose of the requirement that a jury represent a fair cross section of the community is to insure impartial juries in criminal prosecutions and full community participation in the administration of criminal law. Taylor v. Louisiana, 419 U.S. 522, 530-531 (1975), see Thiel v. Southern Pacific Co., 328 U.S. 217 (1946). The systematic exclusion of an identifiable group in the community violates the cross section requirement.

Henry Willis' counsel,in oral argument before the state trial court, explained the reasons why the representation of young adults age 18 - 30 on the jury were necessary to a fair trial: Henry Willis, a young black man, was being tried for his life in a rural south Georgia town. Only the young adults in the community had grown up in a desegregated society; they were the only white group eligible for jury duty who had attended desegregated schools and had an opportunity to socialize with black persons. They would be in the best position of any white persons to view Henry Willis in human terms and understand his background and character in making the sensitive life-death judgment. Knowing that the prosecutor was going to strike all black persons from the jury (See Issue I, supra), Henry Willis saw young adults as the only group that he could hope would understand the mitigating circumstances to be presented in his case. (Ex. 20 at pp. 417-425). The prosecutor wanted and got an old-time-thinking white jury.

In Hernandez v. Texas, 347 U.S. 475 (1954), this Court, in discussing whether Mexican Americans constituted a cognizable group in a Texas community, held that whether a particular group is cognizable is question of fact to be determined from evidence:

> Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existences of a distinct class is demonstrated, and it is further shown that the laws as written or as applied single out that class for different treatment not based on some reasonable classifcation, the guarantees of the Constitution have been violated. . .
>
> 347 U.S. at 478.

Cf. Ciudadanos Unidos de San Juan v. Hidalgo Cty., etc, 622 F.2d 807, 181 (5th Cir. 1980), cert. denied 450 U.S. 964 (1981), where the Fifth Circuit, citing Hernandez, held that young adults had the right to present evidence to show that they constituted a cognizable group with a right to adequate represetnation on county jury lists.

All that the Eleventh Circuit has done in Henry Willis' case is to enter an order, virtually interlocutory in nature, allowing Henry Willis to return to the United States District Court and present the evidence he has never been allowed to present in any court; to prove that young adults constitute a cognizable group in Bleckley County, Georgia, a county with a history of racial discrimination.

The Eleventh Circuit has not created any new category and has not expressed any opinion on whether Henry Willis can meet his burden of proof. All that has been granted to Henry Willis is his right under Hernandez to meet the burden of proof.

The Eleventh Circuit has retained jurisdiction of the appeal and will review the district court's final order. At this intermediate stage, the issues and facts have hardly been crystalized into any final form appropriate for review by this Court.

CONCLUSION

WHEREFORE, Petitioner's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served counsel for the opposing party with a copy of the foregoing pleading by placing same in the United States Mail with adequate first-class postage attached thereon addressed to Mr. Michael J. Bowers, Attorney General, State of Georgia, 132 State Judicial Bldg., 40 Capitol Square, S.W., Atlanta, Georgia 30334.

This 18th day of April, 1984.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ORIGINAL

WALTER D. ZANT, WARDEN, *

Petitioner *

* No. 83-1558

v. *

HENRY WILLIS, III, *

Respondent

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondent, Henry Willis, III, by his undersigned counsel, asks leave to proceed in this Court in forma pauperis. Respondent's affidavit of indigency is attached to this motion.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 83-1558

WALTER D. ZANT, Warden
Georgia Diagnostic and
Classification Center,

Petitioner,

v.

HENRY WILLIS, III,

Respondent

AFFIDAVIT OF INDIGENCY

I, HENRY WILLIS, III, being first duly sworn, depose and say that I am the Respondent in the above-entitled cause; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes ___ No ✓

a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

_____

_____

b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

1975; $400 per month

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment? Yes ___ No ✓
b. Rent payments, interest or dividends? Yes ___ No ✓
c. Pensions, annuities or life insurance payments? Yes ___ No ✓
d. Gifts or inheritances? Yes ✓ No ___
e. Any other sources? Yes ___ No ✓

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months. $25 from family

3. Do you own cash, or do you have money in a checking or savings account? Yes ✓ No ___ (Include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned. $12.00

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes ___ No ✓

If the answer is "yes", describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. None

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 11, 1984

Henry Willis III
HENRY WILLIS, III

Sworn to and subscribed to before me this 11 day of April, 1984.

NOTARY PUBLIC

My commission expires:

3-20-87

CERTIFICATE OF SERVICE

I hereby certify that I have served counsel for the opposing party with a copy of the foregoing pleading by placing same in the United States Mail with adequate first-class postage attached thereon addressed to Mr. Michael J. Bowers, Attorney General, State of Georgia, 132 State Judicial Bldg., 40 Capitol Square, S.W., Atlanta, Georgia 30334.

This 18th day of April, 1984.

Joseph M. Nursey
COUNSEL FOR HENRY WILLIS

P.O. Box 1978
Atlanta, Georgia 30301
(404) 688-8116

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

WALTER D. ZANT, WARDEN, *

Petitioner *

* No. 83-1558

v. *

HENRY WILLIS, III, *

Respondent *

AFFIDAVIT OF TIMELY FILING

Before me the undersigned authority, personally appeared Joseph M. Nursey, who after being duly sworn deposes and states:

1. I am a member of the Bar of this Court.

2. Respondent's Brief in Opposition to Petitioner's Petition for Writ of Certiorari in the above-styled case was deposited in the United States mail with adequate first class postage attached, at the United States Post Office on Marietta Street in Atlanta, Georgia on April 18, 1984. The Brief in Opposition was mailed within the time period allowed by the Rules of this Court for filing a Brief in Opposition.

JOSEPH M. NURSEY

Sworn to and subscribed to before me
this 18th day of April, 1984.

Pamela Ann Tumblin
NOTARY PUBLIC

My commission expires: Aug 22, 1984